HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.5517 of 2005

Dated: 26th October, 2005

Between:

Thummala Surender Reddy S/o. Anantha Reddy,

R/o.Boddugudem Village, Mothkuru Mandal,

Nalgonda District.

..... PETITIONER

AND

1.The Government of Andhra Pradesh, rep. by its Principal

Secretary, Irrigation Department, Secretariat Buildings,

Hyderabad and others.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.5517 of 2005

ORDER:

This writ petition has been filed by Thummala Surender Reddy with a prayer to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the inaction of the respondents in initiating the appropriate action on his representation dated 04.02.2005 to stop the proposed illegal construction in the name of 'Pothana Kalabhavan' in part of Mothkuru Tank comprising S.Nos.430 and 431 of Mothkuru Village, Nalgonda District, as arbitrary and illegal.

2. The petitioner claims that he is owner of Ac.11.01 guntas comprising various survey numbers in Boddugudem Village. According to him, the source of irrigation to his lands is Boddugudem tank. It is his further contention that Brindavanam Flood Canal is the feeder channel to nearly 14 tanks including Boddugudem tank. When the Pothana Sahithi Samskruthika Samithi, rep. by its Secretary-S.N.Chary, Mothukuru village-7th respondent, under the guise of construction of 'Pothana Kalabhavanam' is trying to occupy more than 3000 sq. yards of Peddacheruvu sikham land, the petitioner submitted a representation to the official respondents seeking direction to the 7th respondent to stop the construction. When there is no action on the part of the respondents 1 to 6 in preventing the constructions of the 7th respondent in the sikham land, he has chosen to approach this Court by invoking the jurisdiction under Article 226 of the Constitution of India.

3. Respondents 1, 4, 5 and 7 filed separate counter affidavits. The stand of the respondents is that the tank of Boddugudem village does not belong to Irrigation Department and this tank does not come under Brindavanam Canal System, and therefore, the petitioner has no right to stop the constructions being made by the 7th respondent. It is suffice to say the relevant portion of the counter affidavit of 4th respondent and it is thus:

> "In reply to para. No.2 of affidavit it is submitted that appropriate action on the representation dated 04.02.2005 of the petitioner has been taken. The construction of building for Pothanakalabhavanam at Mothkur village has been proposed in Sy.No.431 which is not a sikham land as such the respondent officers have taken up the construction work with an estimated cost of Rs.25.00 lakhs under MPLAD (Member of Parliament Local Area Development) Grant, for which Administrative Sanction accorded by the District Collector, Nalgonda vide proceedings No.11/4778/04.MP-RS.TSR, dated 08.11.2004 of District Collector and Chairman, DRDA, Nalgonda from out of the Member of Parliament (Rajya Sabha) Grant allocated by Sri T. Subbi Rami Reddy, Hon'ble MP (RS). All steps have already been taken to protect and preserve the Mothkur Pedda Cheruvu existing in S.No.430 over an extent of Ac.95.14 gts. (i.e. Cheruvu Shikam) without affecting the total ayacut land admeasuring Acs.111.05 gts. and any factor in providing water facility to the Ayacutdars and their Agricultural lands. Thereby the construction of the building is not illegal and arbitrary and moreover the contention of the petitioner mentioned therein is incorrect.
>
> Para.No.4:- In reply to the para Nos.3 and 4 it is submitted that the "Flood Water Canal" by name Brindavanam Canal was restored in the year 1972. In order to supplement 7 minor irrigation tanks i.e. (1) Peddacheruvu, Mothkur; (2)

Ingisammakunta, Mothkur; (3) Twintank, Kondagadapa; (4) Guntucheruvu, Kondagadapa; (5) Oorachervu, Kanchanpally; (6) Oorachervu, Patimatla; and (7) Ramasamudramchervu, Dacharam. Moreover only 1010 acres will be covered under this canal but not 2000 acres as contended by the petitioner. The petitioner is not at all the ayacutdar under the Peddachervu of Mothkur village and the Boddugudem village is not connected with this Canal. Moreover the Boddugudem village is at a distance of 13 KMs from Peddachervu of Mothkur village. The petitioner is having agricultural lands in Boddugudem village to an extent of Acs.11.01 guntas in Sy.Nos.702/Aa, Ac.1.05 gts., 712/Aa Ac.1.22 gts., 714 Ac.0.28 gts, 715 Ac.2.05 gts, 716/A Ac.0.27 gts, 717 Ac.0.12 gts, 721 Ac.1.27 gts., 722 Ac.1.33 gts., 720/Aa Ac.0.20 gts and 724 Ac.0.22 gts respectively. Thus it is very clear that the Brundavan canal does not feed any source directly or indirectly to Boddugudem village and the question does not arise in respect of lands belonging to the petitioner will be irrigated through the water of the Canal. Thereby the contention of petitioner is imaginary and baseless."

4. Heard learned counsel appearing for the petitioner, learned Government Pleader for Irrigation and Command Area Development appearing for the respondents 1 and 2, learned Government Pleader for Panchayat Raj and Rural Development appearing for the respondents 3 to 5, and learned counsel appearing for the 7th respondent.

5. Learned counsel appearing for the petitioner submits that S.No.431 is a sikham land and therefore, any constructions permitted in the sikham land would obstruct the flow of water and thereby the rights of the ayacutdars under Boddugudem tank are badly affected and thus, 7th respondent is required to be prevented from putting any constructions in the sikham land.

6. On 07.10.2005 an order came to be passed by this Court directing the petitioner to prove that his lands are nearby Peddacheruvu tank and the source of irrigation to the lands is from Peddacheruvu tank. In pursuance of the said direction, the petitioner filed reply affidavit and produced additional material.

7. Learned counsel appearing for the petitioner by referring the rough sketch of the irrigation tanks tries to convince the Court that the Brindavanam canal is

the feeder channel to Boddugudem tank. The rough sketch is not authenticated by any officials.

8. The respondents have taken a categorical stand that Boddugudem tank does not belong to Irrigation Department and this tank does not come under Brindavanam Canal System. Unless the petitioner places on record some material to show that Brindavanam canal system is the feeder channel to Boddugudem tank, he cannot maintain the writ petition. Since the petitioner failed to place any material to show that Brindavanam canal system is the feeder channel to the Boddugudem tank, he cannot raise any objection for the construction being made by 7th respondent in Survey No. 431.

9. Accordingly, the writ petition is dismissed. No costs.

_____

B.SESHASAYANA REDDY, J.

Dated: 26th October, 2005.

Note:

Issue C.C. within a week.

B/O

cs